



Comptroller General
of the United States

Washington, D.C. 20548

42572

Decision

Matter of: Access Flight Services--Reconsideration

File: B-242644.2

Date: April 8, 1991

Frederick C. Campbell for the protester,
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Dismissal of original protest because protester failed to respond to agency report is affirmed where, despite filing response to agency's request for summary dismissal, protester failed to respond to agency report.

DECISION

Access Flight Services requests reconsideration of our March 9, 1991 dismissal of its protest against the award of a contract under invitation for bids (IFB) No. F28609-90-B-A027, issued by the Department of the Air Force. We dismissed Access' protest because Access failed to submit within 10 working days after the due date for the agency report either comments on the agency report or a request that the protest be considered on the basis of the existing record. Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1990). We affirm our dismissal.

On January 14, 1991, Access filed its protest. By notice of January 16, we requested a report from the agency with a scheduled due date of February 21. The protester also was advised in a January 16 acknowledgment letter of its protest of our decision to request an agency report and of the February 16 report due date. This letter further advised the protester that its failure to respond to the agency report would result in dismissal of its protest. On January 24, the Air Force, in a memorandum of one paragraph dated January 23, requested that the protest be summarily dismissed for failure to state a valid basis of protest. 4 C.F.R. § 21.3(m). On February 6, Access filed a response to the Air Force request for summary dismissal and requested a ruling from our Office. On February 15, in response to the protest and the February 6 Access letter, the Air Force filed a report which included a new argument that Access was not an interested party because

it withdrew its bid for mistakes unrelated to the protest issue. The agency's letter was clearly labeled as the agency report. The protester did not respond to the agency report, and we dismissed its protest on March 8, the 11th working day following the scheduled report due date as specified in our acknowledgment letter of the protest which was furnished to the protester.

Access basically argues that since it responded to the Air Force's January 23 memorandum requesting summary dismissal, and since the subsequent Air Force report raised many of the same points which had been raised in the earlier Air Force memorandum, it reasonably believed that it had satisfied the response requirements of our regulations.

First, we note that the Air Force's report did contain an additional argument concerning whether Access was an interested party because of Access' decision to withdraw its bid which Access could not, and did not, address in its earlier letter. Second, our Bid Protest Regulations provide that the failure of the protester to respond in writing to an agency report will result in the dismissal of the protest. 4 C.F.R. § 21.3(k). Absent a timely written request to consider the protest on the existing record or the filing of comments to the agency report, we have no way of knowing whether the protester has continued interest in the protest. A response to a request for summary dismissal filed prior to the agency report does not satisfy the requirements of our regulations.

We affirm our dismissal.



Robert M. Strong
Associate General Counsel